

Decision 05-07-020 July 21, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to, Among Other Things, Increase its Authorized Revenues for Electric Service in 2003, and to Reflect that Increase in Rates.

Application 02-05-004
(Filed May 3, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Southern California Edison Company.

Investigation 02-06-002
(Filed June 6, 2002)

**OPINION GRANTING THE UTILITY REFORM NETWORK
INTERVENOR COMPENSATION FOR ITS
SUBSTANTIAL CONTRIBUTION TO DECISION 05-03-022**

Pursuant to § 1801 *et seq.* of the Pub. Util. Code and Rule 76.71 *et seq.* of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) is awarded \$52,616.58 in compensation for its substantial contribution to Decision (D.) 05-03-022, issued in Phase 2 of the test year 2003 general rate case (GRC) of Southern California Edison Company (Edison).

I. Procedural Background and Summary

A. Procedural Issues

A prehearing conference in this proceeding was held on June 13, 2002. TURN timely filed a Notice of Intent (NOI) on July 15, 2002, pursuant to § 1804(a). By Ruling dated August 27, 2002, Administrative Law Judge (ALJ)

Wetzell found that TURN is a “customer” pursuant to § 1802(b), meets the requirement for financial hardship pursuant to § 1804(a)(2)(B), and is eligible to file an award of intervenor compensation.

Consistent with the requirement Pub. Util. Code § 1804(c), this request for compensation was filed on May 20, 2005, within 60 days of D.05-03-022 being issued.

Section 1804(c) requires that a compensation request include “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” On October 18, 2002, TURN filed an addendum to its NOI with updated expenses and budget estimates. The requirement for a description of services has been met. This request for compensation also addresses requirements adopted in the intervenor compensation rulemaking and investigation (see D.98-04-059), including requirements that the benefits to ratepayers outweigh the costs of participation, and that the customer represented interests that would “otherwise be underrepresented.” TURN previously was granted intervenor compensation in this proceeding in D.05-06-031 for its substantial contribution to the Phase 1 decision, D.04-07-022.

B. Summary of Proceeding and TURN’s Participation

In this proceeding, three parties filed protests, six requested intervenor compensation, and several more filed motions to intervene as a party. Edison submitted testimony with various proposals for marginal cost calculation, revenue allocation and rate design in October 2002, and substantially updated its testimony in March 2003. The Office of Ratepayer Advocates (ORA), a

protestant, submitted testimony on July 1, 2003. TURN submitted testimonies and rebuttal testimonies of two expert witnesses in August and September 2003.

Extensive settlement negotiations occupied parties in 2003 and 2004. Settlement negotiations paused in order to await a Phase 1 decision, due to the impact of potential changes in the revenue requirement on rates. All issues related to both the revenue requirement and rate design were resolved in a settlement filed on November 10, 2004.

TURN participated very actively in all areas of Phase 2 of the proceeding. Its consultants submitted extensive testimony concerning marginal cost methods, allocation, and rate design. Its consultants were also integral in reviewing numerous spreadsheets with revenue allocation results from various testimony and settlement proposals.

II. TURN'S Substantial Contributions

A. Standard of Evaluation for Substantial Contribution

Section 1802(h) of the Pub. Util. Code defines "substantial contribution" as follows:

"'Substantial contribution' means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees and other reasonable

costs incurred by the customer in preparing or presenting that contention or recommendation.”

The Commission has interpreted the Section 1802 definition, in conjunction with Section 1801.3, so as to effectuate the Legislature’s intent to encourage effective and efficient intervenor participation. We have repeatedly held that an intervenor’s contribution to a final decision may be supported by contributions to a proposed decision, even where the Commission’s final decision does not adopt the proposed decision’s position on a particular issue. D.92-08-030, *mimeo.* at D.96-08-023, *mimeo.* at 4; D.96-09-024, *mimeo.* at 19; D.99-11-006, *mimeo.*, pp. 9-10; D.01-06-063, pp. 6-7. We have granted compensation where a customer’s participation contributed to the decision-making process even if specific recommendations were not adopted, and where a customer’s showing assisted the Commission in its analysis of an issue. E.g., D.98-11-014, p. 8 (“TURN contributed to D.97-08-055 by raising this issue and developing the record on the implications of this conflict.”).

While we have held that mere “participation in settlement negotiations” is not sufficient to guarantee productive participation, we have recognized that active participation in settlements does justify compensation, especially when it contributes to the development of a record that assists the Commission. D.00-07-046, *mimeo.* at 6; D.00-07-015, *mimeo.* at 5.

B. TURN’s Participation Made a Substantial Contribution as Reflected in the Terms of the Settlement Agreement Adopted by the Commission

Generally, it is difficult to identify specific contributions to a settled outcome since Rule 51.9 precludes disclosure of settlement discussions, and each settlement term reflects a negotiated compromise between various parties.

D.05-03-022 is terse and does not provide any summary of various parties' positions. Nevertheless, because all parties submitted expert testimony, TURN's contributions can be inferred by comparing its testimony recommendations with both the positions of Edison in its rebuttal testimony, Exhibit 2-39 (which specifically accepted various TURN recommendations), as well as with the specific provisions of the Settlement Agreement itself.¹ TURN's request for compensation includes a meticulous comparison. As TURN asserts, we find from the Settlement Agreement that TURN's participation was highly successful, since the adopted Settlement Agreement incorporated most of TURN's primary recommendations concerning marginal cost calculation, revenue allocation, and rate design.

The following bullet points, submitted by TURN, compare TURN's recommendations, as made in the direct testimonies of William Marcus and Jeffrey Nahigian, with Edison's rebuttal testimony positions and with the final terms of the Settlement Agreement adopted by D.05-03-022.²

Marginal Cost Calculation

- TURN objected to the use of the rental method for calculating marginal customer costs and argued for continued use of the New Customer Only (NCC) method.³ TURN and ORA were the primary

¹ The Settlement Agreement is included as Attachment A to D.05-03-022.

² TURN notes primarily those positions which were wholly or partially adopted in the Settlement Agreement. Some of TURN's recommendations were either explicitly rejected, or were not directly incorporated in the text of the agreement.

³ Exh. 2-18, p.12-16.

parties advocating this method and the Settlement adopted this position.⁴

- TURN, as well as other parties, objected to Edison's proposed grid infrastructure method for marginal distribution demand costs.⁵ Edison agreed to continue use of the traditional regression methodology, and the Settlement adopted this position.⁶
- TURN objected to the inclusion of a volatility premium in the calculation of the marginal generation capacity cost, though TURN was willing to accept Edison's proposed value of \$33.82/kW-yr.⁷ TURN supported ORA's value of \$69/kW-yr for load management costs, based on additional analysis.⁸ The Settlement adopted a combined compromise value of \$78/kW-yr for marginal generation capacity costs and load management costs.⁹

Revenue Allocation

- TURN testified that however generation marginal costs are calculated, they should be allocated based on the top 100 hours, not the top peak hour.¹⁰ TURN was the only party that advocated this allocation method. Edison agreed with TURN's recommendation and the settlement adopted TURN's position.¹¹

⁴ SA, ¶6.a.2. TURN also proposed several computation changes to Edison's NCO calculations. Exh. 2-18, p. 17-18.

⁵ Exh. 2-18, 5-10.

⁶ SA, ¶6.a.3.

⁷ Exh. p. 3-4, Marcus.

⁸ Exh. 2-17, p. 3-5, Nahigian.

⁹ SA, ¶6.a.1.

¹⁰ Exh. 2-18, p. 22-23.

¹¹ Exh. 2-39, p. 45-46; SA, ¶6.b.1.a.

- TURN recommended that the Department of Water Resources (DWR) franchise fees be allocated in proportion to DWR costs, rather than in proportion to retained generation.¹² Edison accepted TURN's recommendation.¹³
- TURN was the only party that argued that generation-related Administrative and General (A&G) costs recovered in distribution rates should be allocated based on a generation equal percentage of marginal cost (EPMC) allocator.¹⁴ Edison accepted TURN's recommendation¹⁵ and the Settlement adopted TURN's position.¹⁶
- TURN argued that interruptible rate discounts should be allocated using a generation allocator and including Direct Access (DA) loads.¹⁷ Edison agreed with TURN's position,¹⁸ and the Settlement adopted TURN's position.¹⁹
- TURN was the only party that argued that nuclear decommissioning costs should be allocated based on retail, not bundled-only, sales.²⁰ Edison accepted this correction²¹ and the settlement adopted TURN's position.²²

¹² Exh. 2-18, p. 23.

¹³ Exh. 2-39, p. 47.

¹⁴ Exh. 2-18, p. 26-30.

¹⁵ Exh. 2-39, p. 47.

¹⁶ SSA, ¶6.b.1.c.2.

¹⁷ Exh. 2-18, p. 30-32.

¹⁸ Exh. 2-39, p. 48.

¹⁹ SA, ¶6.b.1.c.3.

²⁰ Exh. 2-18, p. 38-39.

²¹ Exh. 2-39, p. 50.

²² SA, ¶6.b.1.f.

- TURN recommended that public purpose program costs be allocated based on EPMC generation, or as a second-best alternative, on system average percentage but with imputed costs for DA customers.²³ Edison agreed with TURN's alternative recommendation,²⁴ and that position was adopted in the settlement.²⁵
- TURN was the only party that argued that California Alternative Rates for Energy program (CARE) balancing account costs should be allocated in equal cents per kWh rather than as Public Purpose Program costs.²⁶ While Edison claimed that this issue was moot,²⁷ the settlement adopted TURN's position.²⁸
- TURN proposed capping rate increases for bundled customers at SAPC plus 5%, while ORA proposed a cap of 10%.²⁹ The Settlement agreement adopted a cap of SAPC plus 4% for bundled customers, and SAPC plus 5% for DA customers.³⁰

Rate Design

- TURN opposed Edison's recommendations to increase the monthly customer charge and TURN recommended moving to a four-tiered,

²³ Exh. 2-18, p. 36-37.

²⁴ Exh. 2-39, p. 49.

²⁵ SA, ¶6.b.1.g.

²⁶ Exh. 2-18, p. 37-38.

²⁷ Exh. 2-39, p. 50.

²⁸ SA, ¶6.b.1.i.

²⁹ Exh. 2-18, p. 41.

³⁰ SA, ¶6.b.3.

rather than a three-tiered, rate structure for residential customers.³¹
The Settlement adopted both of these positions.³²

- TURN opposed Edison's proposal to apply interruptible credits to maximum on-peak demand and recommended continued use of the average on-peak demand.³³ Edison accepted TURN's recommendation³⁴ and the Settlement adopted this position.³⁵
- TURN recommended increasing the interruptible noncompliance penalty and terminating customers who refuse two interruptions.³⁶ Edison agreed with TURN's recommendations³⁷ and the Settlement adopted this position.³⁸
- TURN recommended that Edison's current submetering discount be frozen and that Edison's revised diversity adjustment factor be adopted.³⁹ TURN opposed the Western Manufactured Housing Communities Association recommendation to lower the diversity factor. The settlement calculated a discount based on the current cost-of-service discount and a diversity factor higher than Edison's proposed number, thus substantially following TURN's recommendation.⁴⁰

³¹ Exh. 2-18, p. 42-52.

³² SA, ¶6.c.2.

³³ Exh. 2-17, p. 7-8.

³⁴ Exh. 2-39, p. 59-60.

³⁵ SA, ¶6.c.4.g.

³⁶ Exh. 2-17, p. 6-7.

³⁷ Exh. 2-39, p. 60.

³⁸ SA, ¶6.c.4.g.

³⁹ Exh. 2-17, p. 10-13.

⁴⁰ SA, ¶6.c.2.d.

In light of the adoption of the settlement positions reflecting TURN's positions on a variety of issues, the record shows that TURN's contributions to D.05-03-022 are substantial. Because of TURN's high degree of success in this case, all of the hours claimed will be compensated. This is consistent with the recognition in the intervenor compensation statute that full compensation may be warranted even where less than complete success is achieved by the intervenor. Pub. Util. Code § 1802(h) and 1803.

C. No Reduction Due to Similarity of Positions is Warranted

TURN's compensation in this proceeding should not be reduced on account of similarity to the showings of other parties. The intervenor statute allows the Commission to award full compensation even where a customer's participation has overlapped in part with the showings made by other parties. Pub. Util. Code § 1802.5.

Most of TURN's specific recommendations were unique and did not overlap with the recommendations of other parties. In certain areas, TURN provided additional analysis in support of positions recommended by ORA. Thus, TURN materially complemented ORA's showing and pursuant to § 1802.5 is fully eligible for compensation for work on those areas.

D. Benefits to Ratepayers of TURN's Participation

In D.98-04-059, we directed intervenors filing compensation requests to attempt to "monetize" the benefits accruing to ratepayers as a result of the intervenor's participation. We stated that such an assessment would ensure that: 1) ratepayers receive value from compensated intervention; and 2) only reasonable costs are compensated. D.98-04-059, *mimeo.*, p. 73. We acknowledged that assigning a dollar value to intangible benefits is difficult.

TURN was successful, in cooperation with ORA, in minimizing very large rate increases proposed for residential customers and contributing to a more equitable settled outcome. It is difficult to allocate specific numerical differences, due to both the confidentiality provisions governing settlement negotiations as well as the total revenue requirements changes between various submissions. However, a general sense of the impact of TURN's participation can be gained by noting that in Edison's original October 2002 filing, the residential rate increase was 21.8% greater than the system average percent change (SAPC) for the bundled service revenue requirement. In Edison's May 2003 update the residential increase was 20.2% higher and in its rebuttal (where Edison accepted several of TURN's marginal cost proposals) the residential increase was 5% above the SAPC. In the final settlement, the rate increase was 4% above bundled SAPC and 3.71% above the total retail SAPC.

Given that the rate case allocated over nine billion dollars in total revenue requirement, each percent change in allocation represents approximately ninety million dollars. Comparing the size of this impact to the amount of TURN's compensation, we find that TURN's participation was productive for ratepayers.

III. Itemization of Services and Expenditures

A. Summary

TURN is requesting compensation for all of the time that it reasonably devoted to this proceeding, as well as the full amount of expenses it incurred for its participation. TURN requests \$52,616.58, including \$20,630 for attorney time and \$30,426 for professional consulting. Travel time for experts and attorneys was recorded at half time, while the hourly rates for time devoted to compensation-related matters were discounted by 50%.

We summarize TURN's requested compensation for consultant fees, total expenses, and attorney time as set forth in the table below. More detailed daily time sheets for attorney hours also have been provided.

Attorney Fees

Attorney	Hours		Total
Marcel Hawiger	17.00 @ \$250	2003	\$ 4,250.00
	45.75 @ \$270	2004	\$12,352.50
	4.00 @ \$270	2005	\$ 1,080.00
Hayler Goodson	0.25 @ \$190	2004	\$ 47.50
Robert Finkelstein	0.50 @ \$365	2003	\$ 182.50
	2.00 @ \$395	2004	\$ 790.00
Michel Florio	2.00 @ \$435	2003	\$ 870.00
	2.25 @ \$470	2004	\$ 1,057.50

Experts and Consultants

William B. Marcus	86.07 @ \$185	2003	\$ 15,922.95
	24.49 @ \$195	2004	\$ 4,775.55
Jeffrey Nahigian	65.50 @ \$125	2003	\$ 8,187.50
	11.00 @ \$140	2004	\$ 1,540.00

Expenses

Attorney Time	\$ 20,630.00
Consulting	\$ 30,426.00
Direct Expenses	\$ 1,560.58

TOTAL \$ 52,616.58

B. The Hours Claimed for TURN's Attorneys are Reasonable

A daily listing of the specific tasks performed by attorneys Hawiger, Finkelstein, Goodson, and Florio in connection with this proceeding has been provided. TURN's attorneys all maintained detailed contemporaneous time

records indicating the number of hours devoted to this case. As a result, TURN submits that all of the hours requested are reasonable, and should be compensated in full.

TURN asserts that its participation in this proceeding reflects a very efficient use of its resources. Hawiger served as TURN's lead counsel in the proceeding. In this role he was involved in the formulation of both the substance and the manner of presentation of TURN's positions. He also was primarily responsible for litigating TURN's claims, including representing TURN during extensive settlement negotiations conducted in late 2003 and 2004.

Goodson, who has been TURN's leading attorney in the master meter discount proceeding, provided assistance on rate design issues related to submetered electric service.

Florio, TURN's Senior Attorney, assisted in the development of TURN's policy position on revenue allocation issues. Florio and Finkelstein provided supervision and policy guidance in settlement negotiations and evaluation of settlement proposals.

C. The Hourly Rates Requested for TURN's Attorneys are Reasonable and Should be Adopted

We have previously authorized the 2003 and 2004 hourly rates requested for all of TURN's staff members and expert witnesses in this proceeding. Minimal hours in 2005 were requested to prepare the compensation request at half of the 2004 rate.

The following table summarizes the hourly rates for attorneys in this proceeding.

Table 4: TURN Hourly Rates

Attorney/Staff	2003 Rate	2004 Rate
Michel Florio	\$435 Adopted D.04-02-017, p. 15	\$470 Adopted D.05-01-029, p. 9
Marcel Hawiger	\$250 Adopted D.04-05-048, p. 17	\$270 Adopted D.05-05-046
Robert Finkelstein	\$365 Adopted D.03-08-041, p. 7	\$395 Adopted in D.05-03-016
Hayley Goodson	\$190 Adopted D.04-12-033, p. 10	\$190 Adopted D.04-12-033, p. 10

D. The Amounts Requested for Expert Witness Expenses are Reasonable and Should be Awarded in Full

TURN's success in this proceeding is attributable in substantial part to the excellent work performed by expert witnesses William Marcus and Jeff Nahigian of JBS Energy, Inc. TURN seeks to recover the \$30,426.00 in costs billed to it directly by JBS Energy. The total sought for JBS Energy expert witness expenses represents a reasonable hourly rate applied for the work performed by these two members of that firm. No direct expenses were billed by JBS in this phase of the proceeding.

William Marcus, Principal Economist, bore responsibility for the development and presentation of TURN's testimony in this proceeding on a variety of issues concerning marginal costs, revenue allocation and rate design, as discussed in more detail in the substantial contribution section. Jeff Nahigian, Senior Economist, addressed issues related to demand response programs and the submetered discount for residential customers.

The hourly rates requested for TURN's expert witnesses reflect the actual "recorded or billed costs" that TURN incurred in retaining their services (§ 1802(c)). The billing rates requested for each firm member are consistent with JBS's standard billing rates during the period when the work was performed.

For each member of the firm, the 2003 and 2004 hourly rates were established in a prior Commission awards of intervenor compensation (D.05-01-029, D.05-03-016 and D.05-04-041), and these rates remain reasonable.

E. Other Reasonable Costs

The miscellaneous expenses of \$1,560.58 listed in the summary table above are reasonable in magnitude and were necessary for TURN's contribution to this case. The photocopying, postage, and delivery costs relate exclusively to the preparation and distribution of its testimony and other documents and correspondence necessary for TURN's contributions. TURN's costs are all reasonable, all were necessarily incurred to enable TURN to participate in this proceeding, and all will be compensated in full.

IV. Award

We award TURN \$52,616.58. This calculation is based on the hourly rates and business expenses described above and we find these rates and expenses reasonable.

This proceeding is a general rate case specific to Edison, and therefore it is responsible for award payment. Consistent with previous Commission decisions, we will order that, after August 3, 2005 (the 75th day after TURN filed its compensation request), interest be paid on TURN's award amount at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release H.15. Interest will continue on this award until full payment is made.

We remind TURN that, like all intervenors, Commission staff may audit TURN's records related to this award and that intervenors must make and retain adequate accounting and all other documentation to support all claims for intervenor compensation.

V. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

VI. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN made a substantial contribution to D.05-03-022 as described herein.
2. TURN's requested hourly rates for attorneys and experts are reasonable when compared to the market rates for persons with similar training and experience.
3. The total of the reasonable compensation is \$52,616.58.
4. The attached appendix summarizes today's award.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to D.05-03-022.
2. TURN should be awarded \$52,616.58 for its contribution to D.05-03-022.
3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.
4. This order should be effective today so that TURN may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$52,616.58 as compensation for its substantial contributions to Decision 05-03-022.
2. Within 30 days of the effective date of this decision, Southern California Edison Company shall pay TURN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning August 2, 2005, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

This order is effective today.

Dated July 21, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners

Compensation Decision Summary Information

Compensation Decision(s):	D0507020
Contribution Decision(s):	D0503022
Proceeding(s):	A0205004, I0206002
Author:	ALJ Barnett
Payer(s):	Southern California Edison Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason for Disallowance
The Utility Reform Network	5/20/05	\$52,616.58	\$52,616.58	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marcel	Hawiger	Attorney	The Utility Reform Network	\$250	2003	\$250
Marcel	Hawiger	Attorney	The Utility Reform Network	\$270	2004	\$270
Hayley	Goodson	Attorney	The Utility Reform Network	\$190	2004	\$190
Robert	Finkelstein	Attorney	The Utility Reform Network	\$365	2003	\$365
Robert	Finkelstein	Attorney	The Utility Reform Network	\$395	2004	\$395
Michel	Florio	Attorney	The Utility Reform Network	\$435	2003	\$435
Michel	Florio	Attorney	The Utility Reform Network	\$470	2004	\$470
William	Marcus	Expert	The Utility Reform Network	\$185	2003	\$185
William	Marcus	Expert	The Utility Reform Network	\$195	2004	\$195
Jeffrey	Nahigian	Expert	The Utility Reform Network	\$125	2003	\$125
Jeffrey	Nahigian	Expert	The Utility Reform Network	\$140	2004	\$140